

**AGREEMENT FOR
PROFESSIONAL
SERVICES**

AT&T Downieville Cell Tower Project
(SCPD File No. 1669)

THIS AGREEMENT for Professional Services ("Agreement") is made as of the Agreement Date set forth below by and between the County of Sierra, a political subdivision of the State of California ("COUNTY"), and

DUDEK , A CORPORATION

"CONTRACTOR"

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A", Provision A.1, and more particularly described in Attachment A-1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A.2 through A.3, and contained in Attachment A-1.

2. TERM.

Commencement Date: Upon issuance of Notice to Proceed by COUNTY

Termination Date: February 29, 2020 (or acceptance of work by COUNTY upon completion)

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, except as provided in this paragraph. COUNTY shall furnish CONTRACTOR only those facilities, equipment, and other materials and shall perform those obligations listed in Attachment "A.4".

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

Tim H. Beals is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. Joe Monaco is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A – Scope of Work (Services)
- Attachment B – Payment
- Attachment C – Additional Provisions
- Attachment D – General Provisions
- Attachment E – Form of Invoice

9. AGREEMENT DATE. The Agreement Date is: **November 19, 2019**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day here first above written.

"COUNTY"

"CONTRACTOR"

COUNTY OF SIERRA

DUDEK

By _____
PAUL ROEN
Chairman, Board of Supervisors

JOE MONACO, President

ATTEST:

APPROVED AS TO FORM:

HEATHER FOSTER
Clerk of the Board

DAVID PRENTICE
County Counsel

ATTACHMENT A
SCOPE OF SERVICES

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

Provisions of all labor and materials as necessary to complete the CEQA environmental review for the AT&T Downieville Cell Tower project (Sierra County Planning Department file no. 1669) including: Project Initiation/Site Reconnaissance/Data Collection; Project Description; Technical Studies (including: biological resources survey, cultural resources survey, and visual simulation); Administrative Draft Initial Study; Public Draft Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Plan; and Project Management; and services as more particularly described in the Scope of Work-Details in Attachment A-1, incorporated and made a part of this Agreement.

A.2. TIME SERVICES RENDERED.

Commencement Date: Upon issuance of Notice to Proceed by COUNTY Planning Director, or his authorized representative

Termination Date: Upon acceptance by the COUNTY of services rendered, or termination of this contract pursuant to Section D.13.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY COUNTY.

None

ATTACHMENT A-1

SCOPE OF WORK – DETAILS

[8 pp.]

November 5th, 2019

Brandon Pangman
Assistant Director
Sierra County Planning Department
(530) 289-3251
bpangman@sierracounty.ca.gov

Subject: Proposed AT&T Cell Tower– CEQA Proposal

Dear Mr. Pangman:

In response to your request, Dudek is pleased to submit the following scope of work for California Environmental Quality Act (CEQA) compliance for the Downieville AT&T Cell Tower Project. The proposed footprint of the project would be approximately 35 feet by 35 feet. The site itself is relatively flat and no major grading cuts are proposed. The project will require the removal of three pine trees and is not located near a water source. The project is located adjacent to an existing residence but no demolition or structure alteration is proposed. Construction access for the project will be from Galloway Street and no street modification or improvements would be required. Dudek's work program includes requested studies, including a biological resources survey and memo, cultural resources survey and memo, and visual simulation modeling.

Our proposed scope of work (attached) is designed to complete a CEQA Initial Study / Mitigated Negative Declaration for the proposed project. The estimated cost to complete the tasks identified in our attached scope of work is **\$29,480.00**. We understand that the County would like this work expedited to the extent possible and we are prepared to initiate work, including necessary field visits, immediately upon receiving notice to proceed. It is expected that a draft CEQA document can be prepared in six to eight weeks. Please contact me with any questions regarding Dudek's proposed scope of work. We look forward to another opportunity to work with Sierra County on the cell tower project.

Sincerely,



Markus Lang
Project Manager

ATTACHMENTS:

- Proposed Scope of Work
- Cost Estimate Detail Spreadsheet

I PROPOSED SCOPE OF WORK

The following task outline describes each specific task the Dudek team will complete in providing environmental review services to the County for the AT&T Cell Tower project.

TASK 1: PROJECT INITIATION/SITE RECONNAISSANCE/ DATA COLLECTION

Upon authorization to proceed, Dudek will collect data and review pertinent project documentation and other environmental information relevant to the project site and vicinity. Information pertinent to performing technical studies and preparing the CEQA document could include site photos, project exhibits and plans, limits of the anticipated disturbance area and construction access routes, CAD/GIS data, anticipated construction schedule and equipment, grading quantities, proposed best management practices, project history and background, and other information determined to be pertinent to the tunnel project. Dudek staff will coordinate with County staff, as necessary, to conduct a brief site visit to review existing conditions in the project area and obtain baseline information to inform the overall CEQA work program. Background desktop research required to complete technical studies will also be initiated under Task 1.

Cost for Task 1..... \$1,760.00

TASK 2: PROJECT DESCRIPTION

The development of a thorough project description is the critical first step in preparing a legally adequate environmental document. Building on information provided by the County during project initiation, Dudek will prepare a detailed project description to support and provide the foundation for the CEQA analysis. Based on information in the AT&T Wireless Facility Project application and other information provided by the County, the project description will describe the following within the context of the resource topics to be analyzed in the CEQA Initial Study:

- environmental setting of the project area,
- project background/history,
- surrounding land uses,
- existing project operations and condition of facilities, and
- project components, including any alternatives or options under consideration, construction methodologies, access and phasing, and proposed project operations.

Dudek will submit a draft project description to the County for review and comment and will make any necessary revisions prior to completing the environmental analysis. It is understood that project design and planning could be ongoing and that minor changes to the project description could be necessary to accommodate changes. Graphics accompanying the project description will include a site and vicinity map, an aerial photograph displaying project-area boundaries, and site photographs and plan exhibits, as necessary.

Cost for Task 2..... \$2,220.00

TASK 3: TECHNICAL STUDIES

Upon final approval of the Project Description and Area of Potential Effect (APE) by the County, Dudek will prepare the following technical surveys which will form the basis of the analysis in the IS/MND.

Task 3.1: Biological Resource Survey and Letter Report

This task is comprised of a pre-field office evaluation of terrestrial wildlife and habitats and a one-day reconnaissance-level survey to document the biological resources within the project area. To accomplish this, Dudek will review the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB), U.S. Fish and Wildlife Service (USFWS) Information, Planning and Conservation (IPaC) database, and the California Native Plant Society (CNPS) Rare and Endangered Plant Inventory prior to conducting the site visit in order to identify potential sensitive vegetation communities and/or special-status species that are known to occur or may potentially occur within the proposed project area.

A baseline biological resources map will be created and will include vegetation communities and conspicuous sensitive species. Vegetation communities will be mapped on an appropriately sized topographic map or aerial photograph of the project area. During this field survey, a general inventory of plant and animal species detected by sight, calls, tracks, scat, or other signs will be compiled. A determination of sensitive or special-status species that could potentially use the site, including potentially-occurring sensitive resources that are not apparent at the time of the survey and which require focused surveys, will also be made. Sensitive species that could require focused surveys could include rare annual plants, sensitive amphibian, reptile or bird species, and sensitive mammal species.

The results of the general biological reconnaissance survey will be presented in a biological resources memorandum. The memo will include a discussion of the survey methods, an assessment of existing vegetation communities, and sensitive biological resources, the significance of potential project impacts in accordance with the California Environmental Quality Act (CEQA), and potential avoidance, minimization, or mitigation measures and other recommendations. Graphics will be prepared to illustrate the location of the site and survey area, the vegetation communities onsite, and existing biological conditions. Proposed mitigation requirements for potential impacts to sensitive resources will be discussed in terms of regional planning, state and federal laws and guidelines.

Cost for Task 3.1..... \$3,500.00

Task 3.2: Cultural Resources Survey and Memo

Cultural resources work will be completed with the intent of satisfying CEQA requirements. Work will be completed in compliance with Section 106 of the National Historic Preservation Act (NHPA) to ensure compliance with federal standards to provide for potential US Army Corps of Engineers (USACE) or other federal agency review. Dudek’s cultural resources investigation will include an Inventory of all cultural resources within the APE. Dudek will conduct a records search for a 1/2-mile radius around the proposed project area at the North Central Information Center (NCIC) to obtain information on previously recorded cultural resources and investigations. We anticipate direct costs for the records search to be no more than \$800.

Upon written notice to proceed, we will also initiate correspondence with the Native American Heritage Commission (NAHC) to request a search of the Sacred Lands File for any known Native American resources identified within the APE. As part of the results of this search, the NAHC will provide a Contact List of tribal individuals and organizations that may have additional information concerning resources in the vicinity. As part of the inventory process, letters will be sent to these contacts requesting any information concerning resources that may be impacted by the proposed project. This information will be included in the final cultural report. It is assumed that formal consultation with Native American tribes pursuant to Assembly Bill (AB) 52 will be completed by County staff. If requested, Dudek will complete additional tribal coordination pursuant to Section 106 review. We assume no more than one round of letters, calls, and emails to NAHC-listed tribal representatives will be required to meet these requirements.

Following archival research, Dudek will complete a pedestrian survey of the APE to determine the presence of any cultural resources. This is anticipated to require one archaeologist no more than one day to survey. We assume no Native American monitor will be necessary during the survey. Dudek assumes that no more than two archaeological or built environment resources (buildings or structures over 45 years in age) resources of low-to-moderate complexity will be identified within the APE. These resources will be subject to field inventory-level documentation sufficient to prepare and Department of Parks and Recreation (DPR) 523 Site Record Form. This is considered the minimum standard of recordation recommended by the California Office of Historic Preservation (OHP). The intent of this documentation will be to identify the presence of archaeological or historic-age resources within the project area. Should additional field documentation of identified resources be required to evaluate these resources for California Register of historical Resources (CRHR) listing, Dudek will work with the County to prepare an additional cost and scope to support these efforts.

Dudek will document the results of the cultural resources investigation in a memorandum. This memorandum will include a summary of records search results and tribal outreach and recommended mitigation.

Cost for Task 3.2..... \$3,500.00

Task 3.3: Visual Simulation

Create two photographic simulations of the proposed ISMND Cell Tower Facilities. The simulations will include existing site photographs as background image and true scale 3d models for the proposed facilities rendered onto the existing photograph. These facilities will include Cell tower, Cell tower appurtenances, grading, generator, equipment shelter and fencing. The background photos will be taken from public vantage points. The exact locations of these key observation points (KOP's) will be determined by Dudek in consultation with County staff during a site visit.

Cost for Task 3.3..... \$4,800.00

Assumptions:

AutoCAD drawings shall be submitted to Dudek for the proposed facilities. These drawings shall include site plan, existing topography, proposed grading and elevations and facility details, including tower design.

Additional views: \$800.00 each

TASK 4: ADMINISTRATIVE DRAFT INITIAL STUDY

Upon the County's approval of the Project Description, Dudek will prepare the IS pursuant to Appendix G of the CEQA Guidelines, with the intention to prepare a Mitigated Negative Declaration (MND). The IS/MND will identify the existing conditions, potential effects of the proposed project, and feasible mitigation measures to avoid or reduce impacts to less than significant. The IS/MND will incorporate the findings and analysis of the technical studies identified above and those provided by the County. Potential environmental issues that will be addressed in the IS/MND are as follows:

- **Aesthetics:** Due to the location of the proposed project in the Scenic Corridor, visual simulations are proposed as part of this work program. To conduct this analysis Dudek will rely on site photos, project plan sets and cut sheets, a description of proposed project activities and materials, topographical maps, and model simulations.
- **Agriculture/Forestry:** Dudek will review existing information with respect to allowable uses within the project site boundary.
- **Air Quality:** It is assumed that compliance with existing California regulations will ensure that impacts remain less than significant. Dudek will consult with the NSAQMD to determine an appropriate screening technique. It is assumed that no modeling will be required.
- **Biological Resources:** The analysis of potential project impacts on biological resources will be based on the biological survey completed by Dudek in Task 3.1.
- **Cultural Resources:** The analysis of impacts to cultural resources will be based on the survey completed by Dudek under Task 3.2.
- **Energy:** It is expected that the proposed project would require little or no use of energy during operation. It is assumed that compliance with existing California regulations will ensure that impacts remain less than significant.
- **Geology and Soils:** Dudek will use available data and the applicant's project plans and supplemental geotechnical information, as necessary. It is assumed that compliance with existing California engineering regulations will ensure that impacts remain less than significant.
- **Greenhouse Gas Emissions:** It is assumed that compliance with existing California regulations will ensure that impacts remain less than significant. No modeling will be carried out for the analysis.
- **Hazards/Hazardous Materials:** Dudek will use existing information available from database searches of the State's Envirostor website and historical information available from the County. If results indicate potential hazardous materials concerns, a Phase I analysis could be required at additional cost.
- **Hydrology/Water Quality:** Dudek will use existing information and the project grading and drainage plans to prepare this analysis. It is assumed that compliance with existing regulations will ensure that impacts remain less than significant.
- **Land Use:** Dudek will incorporate land use information from the County and Forest Service. It is assumed that the project is not in conflict with existing land use regulations and policies.
- **Minerals:** (assumed to be no effect)
- **Noise:** (assumed to be less than significant) due to the proposed operation as a cell tower it is assumed that noise impacts would only be temporary during construction. No noise modeling is included in this work program.
- **Population/Housing:** (assumed to be no effect)

- Public Services/Facilities: Dudek will use existing information (assumed to be no effect).
- Recreation: Dudek will rely on existing information related to public recreation in the vicinity of the project.
- Transportation/Traffic: Dudek will use existing information to prepare an estimate. It is assumed that the proposed project would result in no increase in vehicle trips in the operational condition and no traffic study is required.
- Wildfire: Dudek will use existing information and reference standard construction best management practices. Dudek’s registered professional foresters and wildfire planners will review this section for adequacy.

The administrative draft IS/MND will be submitted to the County for review in an electronic format. Upon receipt of comments, the administrative draft will be revised and submitted for a final review prior to public release.

Cost for Task 4..... \$7,100.00

TASK 5: PUBLIC DRAFT INITIAL STUDY

Dudek will revise the Administrative Draft IS/MND to incorporate comments provided by County staff and will prepare the public draft IS/MND and the Notice of Intent to adopt an MND. The public draft IS/MND will be circulated for 30 days. Dudek will prepare the following:

- ten (10) print copies of Draft IS/MND (if requested by the County)
- electronic copy for posting on the County’s website and electronic distribution
- 15 CD copies and printed summary for delivery to the State Clearinghouse
- Notice of Intent for posting by the County Clerk and distribution by mail (to adjacent property owners) and/or by publication in a newspaper of general circulation.
- Notice of Completion/Transmittal for delivery to the State Clearinghouse

Dudek will prepare a draft Mitigation Monitoring Plan (MMP) for implementing the mitigation measures identified in the draft IS. The MMP will identify:

- party(ies) responsible for implementation of mitigation measures
- party(ies) responsible for monitoring of mitigation measures
- time frames for implementation and monitoring of mitigation measures
- performance criteria to be used in the monitoring actions
- funding sources for each mitigation measure, where available.

Dudek will deliver the necessary copies and notices to the State Clearinghouse, and assist the County in local distribution of the Notice of Intent. (Note: our cost estimate does not include posting, publication, or postage costs).

Dudek’s scope of work and budget allows for up to six hours of Dudek staff time to respond to comments received on the public draft IS and will coordinate with the County on responses. Dudek will prepare the Final IS with public comments and responses and documentation of any changes made to the Draft IS in response to comments. Should comments received require additional technical analysis or substantial revisions to the Draft IS, Dudek will work with County staff to identify a path forward.

Dudek will prepare a Notice of Determination and file it with the County Clerk-Recorder's office and the State Office of Planning and Research within five working days of approval of the project and Final IS/MND by the County Planning Commission. The filing of this notice begins a 30-day statute of limitations on challenges to the approved CEQA document. This work program assumes that the County will be responsible for fees associated with filing the final document with the County Clerk-Recorder's office, including the California Department of Fish and Wildlife (CDFW) CEQA review fee (effective January 1, 2019 CDFW fees for an MND are \$ 2,354.75; due upon filing the Notice of Determination).

Cost for Task 5..... \$3,400.00

TASK 6: PROJECT MANAGEMENT

Project Management includes consultation and communication with County staff, technical specialists, and regulatory agencies. This task may include telephone and email coordination to facilitate project progress. Project organization, budget, and schedule management is also included in this task. It is Dudek's understanding that County staff will present the CEQA document at hearings for consideration / adoption of the MND and that Dudek staff will not be required to attend these meetings. Dudek will assist the County in preparing appropriate exhibits and other materials in support of staff's presentation to the County Board of Supervisors.

Cost for Task 6..... \$3,200.00

Cost Estimate Summary

Dudek has prepared the following table to summarize costs for the work program outlined above.

CEQA Work Program	
Task	Cost Estimate
Task 1: Project Initiation/Site Reconnaissance/Data Collection	\$1,760.00
Task 2: Project Description	\$2,220.00
Task 3: Technical Studies	
3.1a – General Biological Survey	\$3,500.00
3.2 – Cultural Resources Survey	\$3,500.00
3.3 – Visual Simulation	\$4,800.00
Task 4: Administrative Draft IS	\$7,100.00
Task 5: Public Draft IS/ MND	\$3,400.00
Task 6: Project Management	\$3,200.00
CEQA Base Work Program (no optional tasks)	\$29,480.00

Schedule

Dudek will commence work once we receive a notice to proceed or a signed contract and will deliver requested products in a timely fashion. Throughout the process, Dudek's Project Manager will keep the County informed as to the schedule of deliverables and if there are any delays anticipated. The general duration of time required to carry out each task is given below.

Task	Deliverable	Deliverable Due Date
1 - Project Initiation/Site Reconnaissance/ Data Collection	Data collection, review documentation, site tour, kickoff meeting	A kickoff meeting will be scheduled upon authorization to proceed. Early November.
2 - Project Description	Draft project description	Within 2 weeks of the County's authorization to proceed and Dudek's receipt of the technical studies prepared on behalf of the County. Target: November 15 th , 2019
3 – Technical Studies	Technical Studies	Various studies completed between November 8 th – December 6 th (2019)
4 - Administrative Draft IS/MND	Administrative Draft Initial Study	Within 5 weeks of the County's approval of the draft project description, Target: December 20 th , 2020
5- Public Draft IS/MND	Drafts of IS/MND and Notice of Intent	Within 2 weeks of County's approval of the Administrative Draft IS/MND. Target: December 31 st , 2019 (circulation complete by end of January 2020)
6 – Project Management	Project Management and Coordination	Throughout project

ATTACHMENT B

PAYMENT

COUNTY shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. COUNTY shall pay CONTRACTOR on a time and materials basis a contract fee not to exceed: twenty-nine thousand, four hundred eighty dollars and no cents (\$29,480.00), in accordance with the proposal attached as Attachment A-1, Page 7, Cost Estimate Summary. CONTRACTOR shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. Payment shall be made within thirty (30) days after the Invoice is approved by the County Contract Administrator. In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed \$29,480.00 without an amendment to this Agreement approved by the Sierra County Board of Supervisors; and, CONTRACTOR shall complete all work for said amount.

B.2 MILEAGE. Included

B.3 TRAVEL COSTS. Included

B.4 AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended in writing by both parties in advance of performing additional services.

B.5 SPECIAL CIRCUMSTANCES. Additional costs may be incurred up to a maximum of \$ 0 with written approval of the designated COUNTY Representative (Operative Provision 7) for this Agreement.

B.6 MAXIMUM CONTRACT AMOUNT. The maximum amount payable to CONTRACTOR under this Agreement shall not exceed the following:

B.1	Base Contract Fee	<u>\$29,480.00</u>
B.2	Mileage	<u>Included</u>
B.3	Travel Costs	<u>Included</u>
B.4	Authorization Required	<u>Yes</u>
B.5	Special Circumstances	<u>None</u>
MAXIMUM CONTRACT AMOUNT		<u>\$29,480.00</u>

ATTACHMENT C
ADDITIONAL PROVISIONS

[NONE]

ATTACHMENT D

GENERAL PROVISIONS

D.1 INDEPENDENT CONTRACTOR. For all purposes arising out of this Agreement, CONTRACTOR shall be an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in *Government Code* Section 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1.8 The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY in any way without the written consent of the COUNTY.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for

CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

D.3 CHANGE IN STATUTES OR REGULATIONS. If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

D.4 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.5 INSURANCE.

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to COUNTY, naming the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insured (hereinafter referred to as "the insurance"). The insurance shall contain the coverage indicated by the checked items below.

X **D.5.1.1** Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

— **D.5.1.2** During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$2,500).

X **D.5.1.3** Comprehensive automobile liability insurance with minimum coverage of One Hundred Thousand Dollars (\$100,000) per occurrence and with not less than One Hundred Thousand Dollars (\$100,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

X **D.5.1.4** Workers' Compensation Insurance coverage for all CONTRACTOR employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the *Labor Code*.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

D.5.4 The insurance shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverage's and endorsements to:

County of Sierra
Auditor/Risk-Manager
P.O. Drawer 425
Downieville, CA 95936

D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

D.5.8 COUNTY shall have the right to request such further coverage's and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY. CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for any economic loss or personal injury, including death, as well as for property damage, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors.

D.7 CONTRACTOR NOT AGENT. Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

D.8 ASSIGNMENT PROHIBITED. CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

D.9 PERSONNEL. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

D.10 STANDARD OF PERFORMANCE. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

D.11 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the *California Revenue and Taxation Code* (107). For all purposes of compliance by COUNTY with Section 107.6 of the *California Revenue and Taxation Code*, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.12 TAXES. CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

D.13 TERMINATION. COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

D.13.1.2 COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed One Thousand Dollars (\$1,000). Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is

cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.19 MINOR AUDITOR REVISION. In the event the Sierra County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed 1% of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

D.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or

associations, wherever the context so requires.

D.21.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.24 MODIFICATION. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.28 VENUE. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Sierra, State of California.

D.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.30 CALIFORNIA TORT CLAIMS ACT. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the *Government Code*, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under the terms and conditions of this Agreement.

D.31 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term herein.

D.32 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.33 CORPORATE AUTHORITY. If CONTRACTOR is a corporation or public agency, each

individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

D.34 CONFLICT OF INTEREST.

D.34.1 LEGAL COMPLIANCE. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the *California Government Code*, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

D.34.2 ADVISEMENT. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

D.34.3 ADMONITION. Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

D.35 NONDISCRIMINATION. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (*Government Code* Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing *Government Code* Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the *California Administrative Code* are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.36 JOINT AND SEVERAL LIABILITY. If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

D.37 TAXPAYER I.D. NUMBER. The COUNTY shall not disburse any payments to CONTRACTOR

pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer I.D. Number or Social Security Number (as required on the line under CONTRACTOR's signature on page 2 of this Agreement).

D.38 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":
Board of Supervisors
County of Sierra
Post Office Drawer D
Downieville, CA 95936

With a copy to:
County Counsel
County of Sierra
Post Office Drawer D
Downieville, CA 95936

If to "CONTRACTOR":
Dudek
Markus Lang
853 Lincoln Way, Suite 208
Auburn, CA 95603

ATTACHMENT E
FORM OF INVOICE (SAMPLE)

(Taxpayers I.D. or Social Security No.)

County of Sierra
Auditor's Office
Post Office Box 425
Downieville, California 95936

Our File No. _____

Re: _____

STATEMENT OF ACCOUNT FOR

BALANCE FORWARD \$

TOTAL CURRENT CHARGES:

Total \$ _____